

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

OSCAR TREVINO,

Petitioner,

v.

B.M. TRATE,

Respondent.

No. 1:24-cv-00038-WBS-SAB (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO CLOSE CASE, AND DECLINING TO  
ISSUE CERTIFICATE OF APPEALABILITY

(ECF No. 5)

Oscar Trevino (“Petitioner”) is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 25, 2024, the Magistrate Judge issued findings and recommendations recommending that the petition for writ of habeas corpus be dismissed pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254. (ECF No. 5.) The findings and recommendations were served on the parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the findings and recommendations. (*Id.*) To date, no objections have been filed, and the time for doing so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court holds the findings

and recommendations to be supported by the record and proper analysis.


Having found that Petitioner is not entitled to habeas relief, the Court now turns to whether a certificate of appealability (“COA”) should issue. *See Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) (“Where a petition purportedly brought under § 2241 is merely a ‘disguised’ § 2255 motion, the petitioner cannot appeal from the denial of that petition without a COA.”). A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only allowed in certain circumstances. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. To obtain a certificate of appealability under 28 U.S.C. § 2253(c), a petitioner “must make a substantial showing of the denial of a constitutional right, . . . includ[ing] showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

In the present case, the Court finds that reasonable jurists would not find the Court’s determination that the petition should be dismissed debatable or wrong, or that Petitioner should be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

Accordingly,

1. The findings and recommendations issued on March 25, 2024 (ECF No. 5) are adopted in full;
2. The petition for writ of habeas corpus is dismissed;
3. The Clerk of Court is directed to close the case; and
4. The Court declines to issue a certificate of appealability.

Dated: May 30, 2024

  
WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE